

**REATA L. PENTICO**  
Claimant

**CREATIVE COMMUNITY LIVING**  
Respondent

# TRAVELERS INDEMNITY OF ILLINOIS

2. On March 26, 2001, claimant was employed by respondent as a teacher counselor on the third shift, which is 11 p.m. to 5 a.m. The claimant's primary duties included monitoring and physically repositioning the residents. In addition, claimant was required to clean, do laundry and prepare food.

3. Claimant would physically reposition the residents as they lay in bed. If a resident was laying on their back claimant would physically move them over onto their side. This task was required to be done every two hours.

4. The medical records indicate claimant sought treatment on June 6, 2001, with complaints of muscle spasms in her neck. On June 19, 2001, claimant went to the hospital with a debilitating headache. Claimant began to experience debilitating headaches which she reported to her supervisor but did not associate as being caused by her work.

5. Claimant began a period of treatment for her headache complaints with Janet E. Bradshaw, D.O. Claimant continued to see Dr. Bradshaw with headache complaints and on September 12, 2001, significant neck complaints. Claimant was referred to the Headache and Pain Center in Kansas City in September 2001.

6. In late September 2001, an MRI was performed and revealed claimant had herniated cervical discs at C5-6 and C6-7. The physician at the pain center advised claimant of the MRI findings on October 1, 2001.

7. Claimant continued working after she was advised of her herniated discs and she testified that she advised all three of her supervisors that work was causing her problem to worsen. However, claimant did not fill out an accident report because she did not know the problem was related to work.

8. On October 10, 2001, claimant had a meeting with one of her supervisors, Tracy Lawson, and advised her of the results of the MRI. Claimant further advised Ms. Lawson that her headaches started after she began working for respondent. Lastly, claimant advised Ms. Lawson that the doctor at the Headache and Pain Center, stated claimant's work was aggravating the problem and claimant needed to stop working.

9. On October 12, 2001, claimant was taken off work and provided respondent an off work slip.

10. Randy Lawson, the human resources director for respondent, testified claimant was terminated on October 18, 2001, because of excessive absenteeism. Mr. Lawson had talked with claimant's supervisor who had not heard from claimant for several days and did not know her status. However, on October 17, 2001, Mr. Lawson had received a fax from a doctor indicating claimant was to be off work.

11. Mr. Lawson agreed that if a supervisor is advised that work is aggravating or making a condition worse, the supervisor has an obligation to report a workers compensation claim.

12. Mr. Lawson never received any information indicating claimant had been injured at work until his office received her claim for workers compensation on November 20, 2001.

13. On November 19, 2001, Dr. Bradshaw opined claimant's condition was either caused or aggravated by her work.

### **CONCLUSIONS OF LAW**

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.<sup>1</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>2</sup>

An accidental injury is compensable under the Workers Compensation Act where the accident arose out of and in the course of employment.<sup>3</sup> The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact.<sup>4</sup>

The claimant's uncontradicted testimony establishes that after she was advised she had herniated cervical discs, she told her supervisors that her continuing work activities were aggravating and worsening that condition. The respondent's human resource director agreed the supervisors should have recognized such information constituted a workers compensation claim.

The information that claimant provided her supervisors was sufficient to place respondent on notice that claimant's complaints were related to her work and that claimant may have either injured herself or aggravated a preexisting condition. That information and notice is also sufficient for the alleged series of accidents. Therefore, the Board concludes claimant provided timely notice of the accidental injury as required by the Workers Compensation Act.<sup>5</sup>

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<sup>1</sup>K.S.A. 1999 Supp. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

<sup>2</sup>K.S.A. 1999 Supp. 44-508(g). See also In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>3</sup>K.S.A. 1999 Supp. 44-501(a); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987).

<sup>4</sup>Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

<sup>5</sup>K.S.A. 44-520.

Respondent further contends claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment. Claimant testified her physical activity at work worsened her condition. There is no one from respondent who denies claimant performed the job duties she described. There is further no one from respondent to testify that claimant did not complain of work aggravating her symptoms through her last day worked, October 12, 2001. The Board, therefore, finds claimant's testimony is both credible and uncontradicted, and supports her contention that she suffered accidental injury arising out of and in the course of her employment.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.<sup>6</sup>

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated December 20, 2001, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2002.

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BOARD MEMBER

c: James B. Zongker, Attorney for Claimant  
William L. Townsley, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>6</sup>K.S.A. 44-534a(a)(2).